obligations and powers. *Canada Southern Ry. Co.* v. *Gebhard*, 109 U. S. 527. See 28 HARV. L. REV. 797. It follows that the validity of changes in the by-laws of the corporation should be governed by the laws of the state which incorporated it.

CONSIDERATION — WHAT CONSTITUTES CONSIDERATION — CONSIDERATION MOVING TO PROMISOR FROM THIRD PERSON. — The plaintiff, a manufacturer, sold goods to a jobber who agreed not to resell below fixed prices and to obtain similar price-maintenance agreements from those to whom he sold. The jobber obtained such an agreement from the defendant and gave the consideration therefor. The plaintiff now brings an action for breach of this agreement. For the purposes of the decision the House of Lords assumed that the promise ran direct to the plaintiff, as undisclosed principal, but that he gave no consideration for it. *Held*, that the plaintiff may not recover. *Dunlop Pneumatic Tyre Co.* v. *Selfridge & Co.*, [1915] A. C. 847.

From an early date English courts have consistently refused a right of action to the beneficiary in either the debtor-creditor or sole beneficiary type of contracts for the benefit of a third party. *Bourne* v. *Mason*, 1 Vent. 6; *Tweddle* v. *Atkinson*, 1 B. & S. 393. In these cases the real difficulty with the plaintiff's position is that no promise was made to him. See 22 HARV. L. REV. 223. However the courts almost invariably go on the ground that the plaintiff is a stranger to the consideration. This view is due to the influence of the history of the action of assumpsit, as it originated in an action of deceit in which the plaintiff recovered damages for the defendant's having caused him to part with value on a false promise. To-day the cause of action no longer consists in a tort but in the breach of a promise for which the defendant received consideration. Under this view there is no difficulty in letting a plaintiff sue on a promise made to him for which a third party furnished the consideration. *Hamilton* v. *Hamilton*, 127 N. Y. App. Div. 871, 112 N. Y. Supp. 10. See 25 HARV. L. REV. 187. This result is generally reached in America even in jurisdictions rejecting *Lawrence* v. *Fox*. *Palmer Savings Bank* v. *Insurance Co. of North America*, 166 Mass. 189, 44 N. E. 211. The same course would be open to English courts did they not fail to distinguish a plaintiff who is a true promisee though he gave no consideration, from the plaintiff who is a stranger to both consideration and promise. The decision of the House of Lords in the principal case has definitely closed the door upon this distinction in England.

CONSTITUTIONAL LAW — TRIAL BY JURY — CHANGE OF JUDGES DURING TRIAL — WAIVER OF USUAL PROCEDURE. — The defendant, Freeman, was indicted with others for conspiring to defraud by the use of the United States mails. After the trial had proceeded for eight weeks, Judge Hough, who was presiding, became critically ill, and by the consent of all parties, Judge Mayer took his place for the remainder of the trial, familiarizing himself with the proceedings by reading the record. The defendant was convicted, and appealed, on the ground that the change of judges was a violation of his constitutional rights. *Held*, that the judgment must be reversed. *Freeman* v. *United States* (not yet reported).

For a discussion of the principles, see NOTES, p. 83.

CONTRIBUTORY NEGLIGENCE — IMPUTED NEGLIGENCE — NEGLIGENCE OF HUSBAND IN CHARGE OF CHILD IMPUTED TO WIFE IN RECOVERY UNDER DEATH STATUTE. — The child of the plaintiff was killed by the concurrent negligence of the defendant and the plaintiff's husband, who had charge of the child, and was killed at the same time. The plaintiff now sues for the death of her child under a death statute giving a direct right of action to parents. *Held*, that the marital relation imputes the negligence of the hus-

band to the plaintiff in bar of recovery. *Darbrinsky* v. *Pennsylvania Co.*, 94 Atl. 269 (Pa.).

It is disputed whether the contributory negligence of a beneficiary will defeat the recovery under a death statute by the administrator for the estate. *McKay* v. *Syracuse Rapid Transit Ry. Co.*, 208 N. Y. 359, 101 N. E. 885. *Contra, Richmond, etc. R. Co.* v. *Martin's Adm'r*, 102 Va. 201, 45 S. E. 894. It is clear, however, that a negligent beneficiary cannot recover in his own right. *Indianapolis Street Ry. Co.* v. *Antrobus*, 33 Ind. App. 663, 71 N. E. 971; *Johnson* v. *Reading City Ry. Co.*, 160 Pa. St. 647, 28 Atl. 1001. Therefore, if the negligence of the dead husband can be imputed to the plaintiff in the principal case, she is properly barred. But negligence can ordinarily be imputed only with agency or, as some courts add, such an identity of interest as certain family relations create. See *Little* v. *Hackett*, 116 U. S. 366, 371. Now the marital relation does not create an agency to take care of the children. *Macdonald* v. *O'Reilly*, 45 Ore. 589, 78 Pac. 753. Again, the wife's estate has become under the modern law so distinct from that of her husband that to-day the identity of interest on which the imputation was rested no longer exists. *Louisville, etc. Co.* v. *Creek*, 130 Ind. 139, 29 N. E. 481. See *Phillips* v. *Denver City Tramway Co.*, 53 Col. 458, 468, 128 Pac. 460, 464. Hence, especially when, as in the principal case, all chance of the action being a roundabout recovery by the husband, is destroyed by his death, it seems unfortunate that his negligence should be imputed to his innocent wife.

CRIMINAL LAW — CONSPIRACY — PARTICIPATION OF DETECTIVES. — The defendants were indicted under U. S. COMP. STATS. 1913, § 10201, for conspiring to bring Chinese into the United States unlawfully. Government detectives had suggested and urged the conspiracy, promising governmental protection, in order to place the principal defendant in a position where to avoid prosecution he could be forced to disclose the suspected criminal acts of other Chinese. *Held*, that a conviction is improper. *Woo Wai* v. *United States*, 223 Fed. 412 (C. C. A., 9th Circ.).

An attempt to commit a crime is indictable even though it was impossible to consummate the crime because of an unknown circumstance. *Commonwealth* v. *Kennedy*, 170 Mass. 18, 48 N. E. 770; *People* v. *Gardner*, 144 N. Y. 119, 38 N. E. 1003. See CLARK, CRIMINAL LAW, 2 ed., 130; Beale, "Criminal Attempts," 16 HARV. L. REV. 491, 496. In this respect a statutory conspiracy to commit a crime seems analogous to an attempt. Thus the acts of the defendant in the principal case are clearly an indictable offence. But the trend of authority seems to be toward allowing the defendant, in a case where the crime is first suggested and planned by a government agent, to set that fact up as a bar to conviction. *Woodworth* v. *State*, 20 Tex. App. 375. See *United States* v. *Adams*, 59 Fed. 674, 676. See 18 HARV. L. REV. 65. However, it is submitted that instigation and encouragement by a detective cannot excuse a defendant who has committed an offence against the state. If it is desired to put a wholesome check on the unfortunate practices of unscrupulous detectives, it is better to forbid such practices by statute rather than to entertain a doctrine that would permit a man to commit murder with impunity provided the act were suggested and encouraged by a detective.

DIVORCE — ALIMONY — RIGHT OF PERSONAL REPRESENTATIVE OF DECEASED WIFE TO RECOVER FOR ARREARS. — In an action for arrears of alimony against the estate of her deceased husband, the widow died at the determination of the appeal in the Appellate Division. *Held*, that her executor may be substituted in her place. *Van Ness* v. *Ransom*, 109 N. E. 593 (N. Y.).

Alimony represents in concrete form the husband's duty to support his wife. Originally it was allowed only in cases of divorce *a mensa et thoro*, since a divorce *a vinculis* was never granted except for causes arising before the